Supreme Court, U. S.
FILED
JAN 14 1974
MICHAEL RODAK, JR., CLERK

No. 73-765

# In the Supreme Court of the United States

OCTOBER TERM, 1973

INTERNATIONAL LADIES' GARMENT WORKERS' UNION, UPPER SOUTH DEPARTMENT, AFL-CIO, PETITIONER

v.

QUALITY MANUFACTURING COMPANY AND NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

## MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

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## MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD

The basic question presented is whether it is an unfair labor practice for an employer to discharge an employee for insisting that her union representative be present at an investigatory interview with the employer, which the employee reasonably believes will result in disciplinary action.[1] The Board (with one Member dissenting) held that the discharge consti-

[1] The petition is filed by the Union, the charging party before the Board, which had intervened in the court of appeals.



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tuted an unfair labor practice, and entered an appropriate order (Pet. App. 1a–15a). As the Board explained in a subsequent case, *Mobil Oil Corp.*, 196 NLRB No. 144, 80 LRRM 1188, 1191:

> An employee's right to union representation upon request is based on Section 7 of the Act [29 U.S.C. 157] which guarantees the right of employees to act in concert for "mutual aid and protection." The denial of this right has a reasonable tendency to interfere with, restrain and coerce employees in violation of Section 8(a)(1) of the Act. Thus, it is a serious violation of the employee's individual right to engage in concerted activity by seeking the assistance of his statutory representative if the employer denies the employee's request and compels the employee to appear unassisted at an interview which may put his job security in jeopardy. * * *

The court of appeals reversed the Board's ruling on this question (Pet. App. 58a–71a).[2] While the court recognized that there is "no doubt that employees have a right to union representation * * * after a grievance has been filed" (Pet. App. 68a, n. 1), it held that the Board lacked authority to require the "employer to permit an employee to have a union representative present whenever the employee 'has reasonable ground to fear that the interview will adversely affect his continued employment, or even his working conditions'" (Pet. App. 70a).

[2] The court, however, did sustain the Board's further finding that the Company violated Section 8(a) (1) and (3) of the Act, 29 U.S.C. 158(a) (1) and (3), by discharging a union chairlady for seeking to file grievances based upon the earlier discipline for requesting union representation (Pet. App. 62a).



The Board believes that the decision of the court of appeals is erroneous.[3] Moreover, the issue whether the Act affords employees the right to have the assistance of their union representative at investigatory interviews which could adversely affect their employment conditions is an important and recurrent one in the administration of the Act (see Pet. 14, n. 5). The Board did not file a petition for a writ of certiorari in this case because it concluded that, in view of the relatively large number of Board cases already before the Court,[4] it should await a possible conflict of decisions before seeking review on the issue.

[3] The court's decision is in accord with that of two other circuits. *Mobil Oil Corp.* v. *National Labor Relations Board*, 482 F. 2d 842 (C.A. 7); *National Labor Relations Board* v. *J. Weingarten, Inc.*, 84 LRRM 2436 (C.A. 5).

[4] See *Golden State Bottling Co.* v. *National Labor Relations Board*, No. 72–702; *National Labor Relations Board* v. *Savair Mfg. Co.*, No. 72–1231; *National Labor Relations Board* v. *Bell Aerospace Co.*, No. 72–1598; *National Labor Relations Board* v. *The Magnavox Co. of Tennessee*, No. 72–1637; *National Labor Relations Board* v. *Food Store Employees Union, Local 347*, No. 73–370; *National Labor Relations Board* v. *Wichita Eagle & Beacon Publishing Co.*, No. 73–701; *National Labor Relations Board* v. *Int'l Bro. of Electrical Workers*, No. 73–795; *National Labor Relations Board* v. *Western Addition Community Organization*, No. 73–830.

Since the Union has filed a petition in this case, and the Board believes that the issue warrants further review, however, it does not oppose the granting of the Union's petition.

Respectfully submitted.

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PETER G. NASH,
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*National Labor Relations Board.*

JANUARY 1974.

U.S. GOVERNMENT PRINTING OFFICE: 1974

**The respondent, Quality Manufacturing Company, did not file any formal brief in opposition to the petition.**